

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CITIZENS UTILITY BOARD	:	
	:	00-0620
Request for an investigation into the	:	
current structure of the Nicor Customer	:	
Select Pilot Program and the Proposed	:	
Changes filed August 10, 2000, Meet the	:	
Public Interest Standards and Other	:	
Requirements Set Forth in the Public	:	(Consolidated)
Utilities Act. 220 ILCS 5/4-101, 220 ILCS	:	
5/8-101; 220 ILCS 8-102	:	
 NORTHERN ILLINOIS GAS COMPANY	:	
d/b/a Nicor Gas Company	:	
	:	00-0621
Proposed changes to Riders 15 and 16	:	
and related provisions. (Tariffs filed on	:	
August 11, 2000)	:	

**REDACTED**

**REPLY BRIEF OF THE STAFF OF  
THE ILLINOIS COMMERCE COMMISSION**

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April 12, 2001

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NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its attorneys and files its Reply Brief in the above-captioned proceeding.

**I. INTRODUCTION**

On March 23, 2001, Initial Briefs ("IB") were filed in this proceeding by Staff; Northern Illinois Gas Company ("Nicor" or "the Company"); the National Energy Marketers Association ("NEM"); the Peoples Gas Light and Coke Company ("Peoples"); the Citizens Utility Board ("CUB") and the State's Attorney of Cook County on behalf of the People of Cook County ("CCSAO"); and the Illinois Attorney General on behalf of the People of the

State of Illinois (“AG”), who together with CUB and CCSAO are collectively referred to as “GCI.”

## **II. STAFF’S POSITION WITH RESPECT TO THE CUSTOMER SELECT PROGRAM**

### **A. The Record Demonstrates that the Customer Select Program Should be Approved with Staff’s Proposed Adjustments**

The fundamental question in this proceeding is whether eligibility for the Customer Select Program (“Customer Select” or “Program”) should be expanded to all residential customers in Nicor’s service territory. Although Nicor has largely opposed Staff’s recommendations in this proceeding, Staff recommends that the Commission approve an expansion of the Customer Select Program. Staff has proposed a number of recommendations that will improve the Program by reducing customer confusion, providing additional consumer protections, leveling the playing field for competitive suppliers, and stimulating competition. However, Staff does not condition its recommendation to approve Customer Select expansion on the adoption of any of Staff’s recommendations in this proceeding. Staff’s recommendation to expand Customer Select is based on the optional nature of the Program, the interest shown by customers that exercised their option to participate in the Pilot Program, and the net benefits that customers have received throughout the first three years of the Customer Select Program.

Many aspects of the Customer Select Program, by their very nature, work to the benefit of customers. Through the Program, customers are able make their preferences for services known. Staff believes that this free exchange between buyer and seller serves to satisfy customer needs most efficiently. The Program enables the customer to exercise

choice. Additionally, it provides protection to the customer, not only through the competition between alternative suppliers, but also by the continued option to have gas supply provided by the utility at a regulated rate. Finally, participation in the Customer Select Program is optional. Therefore, if customers do not desire to purchase gas from alternative suppliers, they can continue with the same service that they have received from the utility in the past.

The record clearly demonstrates that, overall, customers have benefited from the availability of the optional Customer Select Program. Furthermore, Staff expects that customers will enjoy even greater benefits if Staff's recommendations are incorporated into the Program. These benefits would result from greater supplier participation in the Program and an associated improvements in the level of competition.

CUB/CCSAO characterizes Staff witness Iannello as "...a proponent of much of Nicor's proposal." (CUB/CCSAO IB, p. 13) However, CUB/CCSAO neglects to emphasize that Staff witnesses Iannello, Schlaf and Sweatman also make numerous substantive recommendations to improve the Program. Staff's recommendations are largely opposed by Nicor and generally supported by CUB/CCSAO with a few exceptions that are discussed below. Perhaps the most significant area of agreement between Staff and CUB/CCSAO, as explained in this Reply Brief, concerns the elimination of all Customer Select charges proposed by Nicor in the instant proceeding.

Staff does disagree with CUB/CCSAO and AG on several issues, including the level of benefits that customers have enjoyed thus far, the need for certification of suppliers, uniform price disclosure as recommended by GCI witness Alexander, and procedural matters for improving customer education.

CUB/CCSAO and AG are recommending that the Commission only approve expansion of the Customer Select Program if the Commission adopts all of their recommended modifications to the Customer Select Program. While Staff witness Iannello, as well as Staff witness Schlaf, concur with a number of CUB/CCSAO and AG's recommendations, Staff would not condition approval of Customer Select expansion on Commission adoption of any of the recommendations made in this proceeding.

As discussed below, Staff believes that the expansion of the Program will serve to benefit customers. In Staff's opinion, the adoption of its proposed recommendations would further enhance the benefits of the Program. However, even if Staff's recommendations are not adopted, Staff believes that the benefits of the existing Program warrant expansion of Customer Select to all customers. In contrast, CUB/CCSAO argues that since consumer welfare has not been "maximized," the Commission should not approve the Customer Select Program unless all of CUB/CCSAO's recommendations are incorporated into the Program. (CUB/CCSAO IB, p. 7) While consumer welfare has certainly not been maximized, the Program nevertheless has provided customers with additional benefits. Customers should not be denied these additional benefits simply because consumer welfare has not been maximized. In sum, Staff believes that the Program has merit and should be available to all customers.

**B. The Customer Select Program has been an Overall Success, and Could be Improved Upon if Staff's Proposed Adjustments are Adopted by the Commission (Benefits and Costs)**

The record evidence in this proceeding indicates that customers have benefited from savings from the utility's rate and the existence of additional pricing options. These customer benefits are discussed below.

While tracking customer savings on an individual basis is tedious, a customer survey conducted by an independent firm calculated residential customer savings of 9% to 11% off of the utility's total bill during the first year of residential eligibility.<sup>1</sup> Savings (losses) for commercial customers ranged from (3%) to 13% over the first two years of the program, depending on a supplier's offer.

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XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Finally, some customers entered into fixed rate contracts in the range of \$0.29 per therm. (Tr. 235) These customers realized extremely high levels of savings, as Nicor's PGA rate soared to more than \$0.90 per therm (or more than 300% of a \$0.29 per therm fixed rate) this winter.

CUB/CCSAO argues that the evidence of savings is “thin” and does not justify expansion of the Customer Select Program. (CUB/CCSAO IB, p. 16) Staff disagrees with CUB/CCSAO and maintains that, while savings should not be the only measure used to evaluate the Pilot Program, the above record of savings supports Customer Select expansion.

<sup>1</sup> The first 80,000 residential customers became eligible during the second year of the Customer Select Program.

**C. Fixed Prices Provide a Valuable Benefit to Customers by Reducing the Risk of Price Volatility**

In its attempt to downplay the savings achieved by customers that were able to lock into a fixed price per therm for their 2000/2001 winter gas supply, CUB/CCSAO notes, “Customers saved if they locked in a fixed price because gas prices unexpectedly rose this year, but the prices could have just as easily fallen leaving those same customers paying more for gas.” (CUB/CCSAO IB, p. 14) Staff agrees that customers on fixed price contracts could have paid more than Nicor's PGA rate if prices subsequently dropped, and Customer Select customers could have incurred net losses rather than net savings in those circumstances. However, net losses would not be a reason to hold back expansion of the Customer Select Program. Even if market prices fell and fixed price customers incurred net losses, the market still allowed the customer protection from price fluctuations in both directions. Furthermore, the fixed price option was voluntarily chosen by the customer. In an economy based on consumer sovereignty and markets, the Commission should give substantial deference to freely taken customer choices. This year, fixed price customers won twice: before the fact, by reducing price risk and after the fact, by saving when compared to Nicor's regulated rate.

In addition to downplaying the significant level of savings that customers with fixed price contracts achieved, CUB/CCSAO's one-sided statement about fixed prices overlooks an important benefit of Customer Select availability. Customers that are eligible for the Customer Select Program will likely have the option to enter into fixed price contracts that eliminate the risk of gas price volatility- a risk to which customers are subject

in the absence of Customer Select eligibility.<sup>2</sup> CUB/CCSAO argues that the utility could offer such a fixed price contract and provide essentially the same service as competitive suppliers. (CUB/CCSAO IB, p. 13) Such an approach has problems both in theory and in practice.

In theory, competition, where viable, is more efficient than regulation. In practice, requiring the utility to offer a fixed price contract or allowing the utility to file for elimination of the PGA in favor of a fixed price can be problematic. For example, one should consider the details surrounding Docket Nos. 98-0819/98-0820. In these dockets, Peoples and North Shore Gas Company ("North Shore") filed to eliminate their PGAs in favor of five-year fixed prices under Section 9-220(d) of the Public Utilities Act ("Act"). This proceeding took upwards of 250 days, and in the end, North Shore and Peoples were unwilling to accept the fixed prices determined to be just and reasonable by the Commission. In any event, even if Nicor had the ability to offer a fixed price that all parties could agree upon, customers would likely have more choices under Customer Select.

**D. Complaints about Customer Select have Provided Useful Information, but the Number of Complaints has been Minimal**

In support of its recommendation to stall expansion of the Customer Select Program, CUB/CCSAO cites a number of Customer Select-related complaints that have been received by Nicor, CUB and AG. These complaints provide valuable insight into some of the problems associated with the Customer Select Program. For example, these complaints have highlighted customer confusion and concerns surrounding the corporate

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<sup>2</sup> While Staff acknowledges that no suppliers have offered a fixed-rate to residential customers for the period of May 1, 2001 through April 30, 2002, there were four suppliers offering a fixed rate to residential customers for the period of May 1, 2001



identity of Nicor Energy L.L.C. (Nicor's affiliated gas supplier), terms and conditions of various supplier contracts, and undesirable supplier activity. Staff, CUB/CCSAO, and AG have all made recommendations to the Program based, in part, on the nature of these complaints. However, the Commission should recognize that the number of complaints filed with the various entities is extraordinarily small compared to the term and size of the Program. Customer Select has been in place for three years and more than 100,000 customers have been served under the Program, but the number of actual complaints (rather than simple customer inquiries) to date regarding the Program totals only 36. (Nicor Exh. F, p. 19) CUB/CCSAO acts as if these complaints constitute a massive public outcry when urging the Commission not to approve expansion of the Customer Select Program. Staff, on the other hand, recognizes that these complaints, while perfectly valid, were small in number and do not provide, by themselves, a sufficient reason for denying an expansion of choice to all Nicor customers. Staff urges the Commission to consider the more than 100,000 customers that expressed their desire to participate in Customer Select by choosing alternative suppliers, when it applies appropriate weight to the 36 complaints filed with the various agencies involved in this proceeding.

**E. Customer Select Expansion Should not be Contingent on Commission Jurisdiction Over Suppliers**

CUB/CCSAO argues that the results of the Customer Select Pilot Program to date call for Commission regulation of Customer Select suppliers. In support of its argument, CUB/CCSAO points to several complaints about two suppliers, Nicor's responsibility to enforce the Standards of Conduct in Rider 16 against its own affiliate, and the alleged

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through April 30, 2002. CUB/CCSAO claims that Corn Belt was the only supplier to offer a fixed rate last year, but the record to

difficulties that customers would face if they were treated unfairly by a supplier.  
(CUB/CCSAO IB, pp. 21-23, 27-29)

CUB/CCSAO references several complaints about Santanna Energy Services ("Santanna"), alleging that Santanna failed to honor its fixed rate contracts and switched the customers to market based rates, as support for Commission certification of suppliers. While these allegations are troubling, there is no evidence that Commission certification of suppliers would have prevented the Santanna incident from occurring. As Staff witness Iannello testified, "[T]hese incidents have occurred in states that have either passed specific legislation requiring unbundling or required unbundling through Commission Order. Some of these states have the same consumer protections and supplier certification requirements that [CUB/CCSAO] is recommending." (Staff Exhibit 3.0, p. 24)

CUB/CCSAO claims that Staff witness Iannello "...leaves it to the market to protect customers." (CUB/CCSAO IB, p. 30) This is simply a mischaracterization of Mr. Iannello's position. Mr. Iannello argues that undesirable behavior, such as Santanna's alleged behavior, is ill-advised in a competitive market where profits can be affected by a supplier's reputation. (Staff Exhibit 3.0, p. 27) It is unfortunate that customers may have been disadvantaged by their choice of Santanna over other suppliers offering a similar or higher but guaranteed price; however, these customers have legal recourse if the allegations against Santanna are true.

CUB/CCSAO claims that the expense of litigation outside of the Commission is generally cost prohibitive for an individual customer, but this claim is unsupported by any evidence in the record. (CUB/CCSAO IB, p. 28) In fact, CUB revealed that it did not know

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this proceeding does not demonstrate this. (CUB/CCSAO IB, p. 17)

the cost of litigation in a data request response. (Tr. 176) Furthermore, without knowing exactly how a system for litigating complaints before the Commission would work, it is impossible to speculate that litigation outside of the Commission would be more costly.

Several of the complaints at issue in this proceeding concern an ambiguous offer by Nicor Energy L.L.C. Apparently, customers thought they were receiving a fixed price when, in fact, the conditions necessary for the "Automatic Lock" price to take effect were never satisfied. Staff witness Iannello reviewed the offer, and found that it could potentially be confusing to an average residential customer. If customers were indeed misled into thinking they would receive a fixed price, the market will discipline Nicor Energy L.L.C. because customers will seek service elsewhere next year. (Staff Exhibit 3.0, p. 26) In any event, ambiguous offers are not a call for Commission certification of suppliers. If the Commission requires a terms of service disclosure in the Standards of Conduct in Rider 16, as recommended by Staff, confusing offers such as Nicor Energy L.L.C.'s "Automatic Lock" offer will be eliminated.

**F. The Proposed Standards of Conduct in Rider 16, as Modified by Staff's Recommendations, will Provide an Effective Method of Imposing Requirements on Customer Select Suppliers**

CUB/CCSAO argues that the Standards of Conduct in Rider 16 are insufficient to police the actions of Customer Select suppliers. Staff submits that the Standards of Conduct, as modified by Staff's recommendations, will provide an effective method of imposing certain requirements on Customer Select suppliers. These requirements, which are designed to provide customers with additional protections, would have to be met by each supplier participating in the Program.

Staff witness Iannello proposes the following language as the last sentence in Nicor's proposed "Standards of Conduct" section in Rider 16:

Any party alleging improper enforcement of the Standards of Conduct may file a complaint with the Illinois Commerce Commission pursuant to Section 10-108 of the Illinois Public Utilities Act. (Staff Exhibit 1.0, p. 19)

If suppliers fail to adhere to the Standards of Conduct and Nicor fails to enforce those Standards, Staff witness Iannello argues that customers can file a complaint with the Commission alleging that Nicor has failed to properly enforce the "Standards of Conduct" section in Rider 16. (Tr. 217)

While Nicor adopts Mr. Iannello's proposal, CUB/CCSAO improperly characterizes the above-proposed language as an attempt to provide customers with a new procedure for bringing complaints against suppliers to the Commission. (CUB/CCSAO IB, pp. 28-29) What CUB/CCSAO fails to understand is that Staff witness Iannello's proposed language would merely inform customers of their rights under the Act. Customers have had, and will continue to have, the rights provided in Section 10-108 of the Act regardless of whether Mr. Iannello's clarifying language is included in the tariff.

CUB/CCSAO argues that, given the Standards of Conduct as they currently appear in Rider 16 and without Commission jurisdiction over suppliers, customers would have to "...carry the burden of proof on two levels: (1) the [supplier's] action violated the Standard of Conduct; and (2) Nicor Gas failed to adequately enforce the Standard at issue." (CUB/CCSAO IB, p. 29) This claim defies simple logic. Conditions one and two are not necessary to prove that Nicor failed to enforce the Standards of Conduct. Condition one implies condition two. That is, if a customer, or the Commission on its own motion, were to

prove that a supplier violated a standard, then, by definition, Nicor would have failed to enforce its "Standards of Conduct."

CUB/CCSAO argues that the "Standards of Conduct" section gives Nicor, rather than the Commission, authority over suppliers. (*Ibid.*) Staff disagrees and argues that utilities are frequently called upon to enforce tariff provisions without constant Commission scrutiny. (Tr. 223) For example, gas utilities assess various charges to suppliers, including their affiliates, such as balancing and back-up charges. Moreover, while the Commission does not track every charge assessed by the utility, the Commission nevertheless retains ultimate authority over the assessment of those charges. The same would be true for the "Standards of Conduct" section in Rider 16. Any authority Nicor may gain through the Standards of Conduct would ultimately be authority given to the Commission. CUB/CCSAO's argument that Nicor, rather than the Commission, is becoming the regulator is not supported by record evidence and should be rejected.

**G. Uniform Price Disclosure has the Potential to Limit the Options Suppliers can Offer and Mislead Customers into Making the Wrong Choices**

CUB/CCSAO and AG recommend that the Commission adopt GCI witness Alexander's proposal for uniform price disclosure. (CUB/CCSAO IB, p. 33; AG IB, pp. 14-15) CUB/CCSAO and AG argue that consumers have no way to compare the various types of offers as they are currently structured under the Customer Select Program. Ms. Alexander's recommendation would require suppliers offering variable prices to "...use an index that is external to the marketer. The identification of the external index [would] be accompanied by a particular usage profile for the recent past and should state: 'This is an

example of how prices would have changed under this index over the last 12 months. Your price will vary with the change in the index and past savings are no guarantee of future prices.” (GCI Ex. 1.0, p. 19)

Staff is concerned that uniform price disclosure, as described by Ms. Alexander, would be more harmful than helpful to customers that are shopping for natural gas. Staff witness Iannello describes the potential to mislead customers into making inappropriate choices with the type of uniform price disclosure recommended by CUB/CCSAO and AG:

Uniform price disclosure can be problematic due to the fundamental difference between fixed prices and variable prices (such as the indexed rates charged by suppliers or the utility's PGA charge). The future value of variable prices could only be estimated due to the volatile nature of market indices and the utility's PGA charge. Fixed prices, on the other hand, would be known with certainty and would not require estimation. If historical prices were used to estimate variable rates, uniform disclosure of fixed and variable prices would actually be a comparison of expected future prices to historical prices respectively - two sets of prices that bear no necessary relationship to one another.”

Natural gas prices have been among the most volatile prices of any publicly traded commodity. Natural gas prices are affected by innumerable factors including, but not limited to, weather, production levels, storage levels, oil prices, and electricity production. There is no reason to believe that this year's prices provide an accurate estimate of next year's prices. In short, historical prices are not good proxies for future prices. (Staff Exhibit 3.0, p. 20)

AG apparently recognizes Mr. Iannello's concern that uniform price disclosure based on historical data would mislead customers, but states, “[T]his same problem exists in mortgage rates, but disclosure is still standard. This is not a reason not to disclose this information.” (AG IB, p. 15) AG argues that gas prices should be disclosed using historical information because mortgage rates are disclosed in the same misleading manner. Staff argues that “two wrongs do not make a right.”

In addition to the misleading nature of uniform price disclosure using historical prices, there are other problems with Ms. Alexander's recommendation. Under Ms. Alexander's recommendation, suppliers offering a variable rate would be required to "...use an index that is external to the marketer." (GCI Ex. 1.0, p. 19) For example, Corn Belt's offer is different than a market rate based on an external index. Corn Belt, a non-profit energy cooperative, is offering to purchase gas on behalf of its customers and charge them 3.9 cents per therm more than the cost Corn Belt incurs. (Tr. 148) Corn Belt, as a non-profit cooperative, may have longstanding relationships with customers that trust Corn Belt to purchase gas in an efficient manner. However, Ms. Alexander's uniform price disclosure would not allow offers such as Corn Belt Energy's cost plus 3.8 cents per therm. While there is no guarantee that customers would save money over any other rates that are available, Staff argues that customer choice should not be limited by imposing unnecessary regulations on the pricing of natural gas supply. Staff urges the Commission to let suppliers meet the demand of the market. If customers demand a particular offer, then let them choose that offer. Ex-ante regulation of pricing options is undesirable because it would rule out certain offers that customers may find valuable and is in direct conflict with the idea of opening up a market to competition.

Finally, as Staff witness Iannello points out in his Rebuttal Testimony:

...the Commission has the legislative authority to require similar price disclosures for retail electric suppliers in Section 16-117(h) of the Illinois Public Utilities Act but has not exercised this authority to date. Perhaps consideration of uniform price disclosure requirements for natural gas suppliers in the Customer Select program should be contingent upon Commission action in the Illinois retail electricity market. (Staff Exhibit 3.0, p. 21)

**H. The Commission Should Require Customer Education Workshops to be Conducted**

CUB/CCSAO, AG and Staff all believe that additional customer education is necessary and would be beneficial to customers. However, the parties disagree on how a customer education program should be developed. Staff witness Iannello recommends that the Commission require workshops to be held on the issue of customer education. (Staff Exhibit 3.0, p. 18) Under Mr. Iannello's proposal, the Commission, in its final order, would direct Nicor to meet with all parties interested in influencing the content and level of customer education. If, at the end of these workshops, any party was dissatisfied with the results, they could voice their concerns with the Commission and the Commission would make a ruling on whether Nicor's customer education plan was sufficient or needed to be improved. (Tr. 237-238)

AG argues that "workshops" will not provide Nicor with enough incentive to develop an appropriate customer education plan as recommended by Staff witness Iannello or GCI witness Alexander. (AG IB, pp. 9-10) Apparently, AG believes that Mr. Iannello's proposal would not ultimately result in the Commission ordering Nicor to improve customer education if the Commission found that the level or content of the education program was insufficient. However, this is simply not the case. Upon cross-examination by AG, Mr. Iannello testified concerning the deficiencies of Nicor's customer education plan: "...if the participants were not satisfied, then the Commission would have to make rulings on various parties arguments..." (Tr. 238)



**I. Nicor's Proposal for Operational Flow Orders Should be Rejected Because it Would Discriminate Against Customer Select Suppliers**

Staff continues to argue that Nicor's Operational Flow Order ('OFO') proposal in the "System Operational Controls" section in Rider 16 is discriminatory because it only applies to Customer Select suppliers. Nicor's Initial Brief says very little in support of its proposed OFO language in the "System Operational Controls" that is not refuted in Staff's Initial Brief. (See Staff IB, pp. 51-57) However, Staff addresses a few points below for clarification.

Nicor justifies OFOs for Customer Select suppliers by attempting to differentiate them from sales service customers and other transportation customers. Nicor states "...Customer Select Suppliers and their customers are not subject to daily metering or daily balancing of usage against deliveries, and have a certain monthly imbalance "tolerances" through the delivery range established by the Company." (Nicor IB, p. 34). Staff argues that Customer Select suppliers and customers pay for the same balancing services and storage capacity as other transportation customers and, therefore, should not be subject to more stringent requirements than other transportation customers. (Staff Exhibit 3.0, p. 14)

Although limitations on the meters of small volume customers prevent Customer Select suppliers from balancing deliveries with consumption on a daily basis, Customer Select suppliers are nevertheless required to meet Nicor's estimated Required Daily Delivery within a range around the estimate. Customer Select suppliers deliver gas to Nicor's system on a daily basis within a range around an estimate of consumption, but, unlike sales customers and other transportation customers, have no control over storage withdrawals. This is in spite of the fact that Customer Select customers pay for the full amount of storage and balancing services that sales customers pay for. The delivery range

represents storage capacity that other transportation customers use to balance deliveries and consumption. (Nicor Exh. B, p. 2) Furthermore, the flexibility that other transportation customers have over storage is much greater than the flexibility afforded through Nicor's proposed Rider 16. There is no fundamental difference between Customer Select customers and transportation customers that perform daily balancing. Therefore, there is no justification for the uneven application of any type of OFO to customers and suppliers that are all abiding by the tariff provisions under which they take service.

Nicor claims, "While operational problems caused by Customer Select deliveries could likely be corrected by the Company without OFOs, through the purchase of services or gas supplies, and recovery of the costs from sales customers, Nicor Gas does not believe that this solution would be fair to sales customers." (Nicor IB, p. 33) There is absolutely nothing in the record that indicates that sales customers would bear the costs of OFOs, if Nicor's proposal were not adopted. Nicor's proposal is to require Customer Select customers to alleviate potential operational problems on Nicor's system. If Customer Select suppliers were to abide by Nicor's orders, the Customer Select suppliers would bear the full amount of cost associated with the operational problem, even though responsibility could not be pinpointed to any one class of suppliers or customers. If Customer Select suppliers failed to abide by Nicor's Orders, they would be assessed Nicor's proposed Operational Flow Order Non-Performance Charge. Perhaps the biggest problem with this Operational Flow Order Non-Performance Charge, other than the fact that the Charge would be applied in a discriminatory manner, is that Nicor has not provided any cost support for or analysis of the Charge. (Tr. 113)

In referring to the report that the Company proposes to issue to the Commission in the event that the Company calls an OFO, Nicor states, “Staff, or any Supplier or customer who believes they have been harmed, can evaluate the propriety of the OFO.” (Nicor IB, p. 35) Staff notes that nothing in Nicor’s proposed language indicates that suppliers would have access to the report.

Staff’s position on Nicor’s proposal to implement OFOs has not changed. Nicor already has the ability to call an OFO through the terms and conditions of its tariff. The appropriate method for requiring suppliers to alleviate operational concerns would be to administer OFOs to all suppliers. Nicor’s proposal would discriminate against Customer Select suppliers, and therefore, should be rejected.

### **III. SINGLE BILLING ISSUES**

There is a clear distinction between the parties advocating single billing for residential customers, and those parties that wish to prohibit it. The two gas utilities involved in this proceeding, Nicor and Peoples, take the position that single billing should not be allowed, and all other parties- Staff, governmental and customer representatives, as well as marketers- believe single billing should be permitted.

Staff and NEM propose that single billing, in the form of account agency, be permitted. Additionally, Staff has no objection to the use of single billing programs that operate under utility tariffs. CUB/CCSAO does not discuss account agency, but it is clear that these parties support single billing. CUB/CCSAO proposes that the Commission should hold a proceeding (perhaps a rulemaking proceeding) to determine single billing policies, a position also held by the Attorney General. (CUB/CCSAO IB, p. 43; AG IB, pp.

22-23) The matter is so important to NEM, the only group representing suppliers in this proceeding, that NEM devotes the entirety of its Initial Brief to a discussion of the merits of account agency.

The benefits of single billing are discussed by Staff in its Initial Brief. Other parties advocating single billing make similar points. For example, CUB/CCSAO notes that suppliers want to issue single bills, and customers want to be issued single bills. (CUB/CCSAO IB, p. 34) CUB/CCSAO also notes that suppliers view single billing as an important competitive option. Additionally, CUB/CCSAO points out that the adoption of single billing would help to establish a competitive market, a market that is presently not characterized by its competitiveness, but rather by one supplier's overwhelming dominance. (*Ibid.*)

Nicor and Peoples, on other hand, oppose single billing for residential customers. Nicor claims that neither it nor the Commission could verify that suppliers would comply with 83 Ill. Adm. Code 280 or 83 Ill. Adm. Code 500 of the Commission's rules. (Nicor IB, p.23) Nicor apparently believes that, if single billing were to occur, it would be handing over responsibility for compliance with these rules to suppliers. (*Ibid.*) Nicor also cites GCI witness Alexander as making the same claim. (*Ibid.*) Staff continues to disagree with these claims.

First, Staff notes that Mr. Harms does not cite the examples of "payment arrangements, disconnection policies, deposits or bill formats," in his any of his written testimony. GCI witness Alexander does mention these issues, but not in the context of Nicor's compliance with Commission rules, as Nicor implies. Rather, Ms. Alexander

discusses the issues in the context of a discussion of the type of consumer protections she believes should be included as part of a single billing program.

Second, Nicor presently allows single billing, in the form of account agency, for its non-Customer Select gas transportation programs. Over 90% of such customers presently employ agents. (Staff IB, p. 7) Presumably, Nicor believes that it must follow all Commission rules, regardless of customer class. However, there is no evidence that Nicor considers its “inability” to monitor single billing suppliers that serve non-Customer Select customers any barrier to Nicor’s compliance with Commission rules.

Nicor also claims that it must continue to have direct contact with customers as “a matter of public safety.” (Nicor IB, p. 23) Staff agrees. Therefore, Staff supports Nicor sending messages directly to its customers. (Staff IB, p. 12) Also, Staff notes that, pursuant to item (b) under the Standards of Conduct section of Rider 16, all suppliers are required to list Nicor’s emergency numbers on all bill rendered to customers. This requirement should serve to eliminate Nicor’s concern regarding the effect on public safety should suppliers be permitted to offer single billing services.

Nicor notes that single billing would increase Nicor’s credit risk, as well as making tracking and crediting customers payments more difficult. (*Ibid.*, p. 24) Staff’s response is that Nicor has not presented any empirical evidence regarding these matters. For that matter, Nicor has not provided any empirical evidence regarding the costs it believes that single billing would impose on Nicor.

Finally, Nicor states that, since residential electric customers have not yet been offered choice, the Commission should not look to residential electric deregulation as a

model for gas deregulation to smaller-use customers. (*Ibid.*) Again, Staff disagrees. In the absence of legislative direction regarding gas deregulation, the most obvious place to look for guidance when formulating gas deregulation policies are the policies in place in the electric industry. There is no dispute that the General Assembly intended that electric delivery services customers, including residential customers, should have the opportunity to receive single billing services offered by suppliers.

Staff recommends that the Commission permit single billing by suppliers through account agency activities. The Commission also should consider requiring Nicor to file a tariff that enables suppliers to offer single billing services. If Nicor is required to propose a single billing tariff, it is reasonable to expect that a follow-up proceeding would be needed, since there are numerous matters that should be addressed prior to the implementation of a single billing tariff.

As noted above, CUB/CCSAO suggests that a rulemaking is needed to set single billing policies, particularly with respect to consumer protection matters. Staff disagrees. Since each of the state's nine electric utilities already have single billing tariffs in place, nine single billing tariffs can illustrate the types of matters that should be addressed by a single billing tariff. Additionally, Staff witness Schlaf and GCI witness Alexander have already discussed many of these issues in this proceeding.

While implementation of a single billing tariff might require a new proceeding, very few of the matters that would need to be addressed if Nicor were to file a single billing tariff would need to be addressed if customers were permitted to use account agents. In fact, Staff expects that single billing through account agency for Customer Select customers

could begin as soon as Nicor is able to change billing addresses in its customer account system. NEM supports Staff on this point, noting that account agency can begin “immediately.” (NEM IB, p. 7)

If, on the other hand, the Commission decides that single billing through suppliers should not be allowed in the Customer Select Program, then the single billing service, which will be a monopoly service in the absence of any other single billing options, should be included in the Customer Select tariff as a regulated service with an accompanying regulated rate.

#### **IV. RIDER 16 CHARGES**

##### **A. Group Charge**

Nicor’s position with respect to costs to be recovered from the monthly Group Charge has never been substantiated in this proceeding. Nicor has not shown that “...essentially the same amount of staff time is required - based on the Company’s actual experience - regardless of the size of the group”. (Nicor IB, p. 29) Staff’s recommendation for a two-tiered Group Charge more accurately reflects the different level of costs incurred by Nicor for larger versus smaller groups. (Staff IB, pp. 29-31)

Nicor’s recommendation that, in the event Staff’s proposal is accepted, the Commission should restrict each Supplier to one group, is not appropriate. (Nicor IB, p. 29) In the first place, suppliers with multiple groups would be paying for costs incurred relative to the size of each group; and therefore would not be paying below cost charges, as presumed by Nicor.

Secondly, there is no basis for Nicor's assertion that "most or all suppliers will have over 10,000 customers" if the Customer Select Program is expanded to all customers. (Nicor IB, p. 29) This situation would only occur if Nicor's recommendation to limit each supplier to one group is accepted.

**B. Account Charge**

**1. Unassigned Costs**

Staff cannot agree to Nicor's position that \$435,000 of "unassigned" costs should be recovered under the monthly Account Charge. (Nicor IB, p. 30) The issue is Nicor's inability to link such costs with one or more of the Rider 16 Charges. (Staff IB, pp. 37-38) Under Nicor's approach, generalized costs that Nicor admits cannot be linked directly to one of the Rider 16 charges, would still be recovered in the Accounts Charge. Nicor proposes to use the Accounts Charge as a "catch all" to recover costs that cannot be directly linked to the Accounts Charge or any of the other Rider 16 Charges. Staff believes that this type of approach is not acceptable.

**2. Unrecovered Costs**

Staff also continues to object to recovering \$658,600 in "unrecovered" costs in the Account Charge. (Staff IB, pp. 36-37) Nicor now "intends to simply continue to impose the administrative fee past 2005." (Nicor IB, pp. 30-31) Thus, it appears that Nicor intends to recover \$658,600, plus at least an equivalent amount after 2005. Nicor's intention helps illustrate why Staff opposes the recovery of "unrecovered" costs. Not only does Nicor fail to justify the initial \$658,600, but now proposes to recover additional amounts in the future with absolutely no cost justification.



**C. Group Additions Charge**

Staff witnesses Iannello and Sweatman and GCI witness Mierzwa argue that charges such as Nicor's proposed Group Additions Charge can pose barriers to entry that will deter suppliers from serving residential customers. (Staff Exhibit 1.0, pp. 14-16; Staff Exhibit 2.0, pp. 29-34) Furthermore, because Nicor's proposed charge is not assessed to suppliers that sign up sales customers, the charge may also be anti-competitive. Although all suppliers would be afforded an exemption from Nicor's proposed Group Additions Charge when signing up sales customers, Nicor Energy L.L.C, Nicor's affiliate, has been signing up over XX% of all customers that switch from sales service to Customer Select and avoiding the Group Additions Charge. (Staff Exhibit A; Tr. 104-107) There is no evidence that this trend will change. If this trend continues, suppliers attempting to sign customers away from Nicor Energy L.L.C. will incur additional costs that Nicor Energy L.L.C avoided.

In order to eliminate concerns about the anti-competitive nature of Nicor's proposed Group Additions Charge and the potential for the Charge being a barrier to entry, Staff witness Iannello recommends eliminating Nicor's proposed Group Additions Charge and recovering the costs associated with customer switching through the monthly Account Charge. In defense of its proposed Group Additions Charge, Nicor states the following:

The Company's experience with its transportation programs in general, and specifically with Customer Select, flatly refutes Staff's "entry barrier" hypothesis. Customer-owned gas transported on Nicor Gas' system constitutes about half of the Company's throughput, and Customer Select has grown each year of the Pilot Program and continues to gain momentum. In fact, absolutely no empirical evidence was presented by Staff or any intervenor to establish that the \$10.00 Group Additions Charge or any other

Supplier charge -- all of which have been in effect for three years. (Nicor IB, p. 31)

These statements do not address Staff's fundamental concern that Nicor's proposed Group Additions Charge poses a barrier to entry for suppliers seeking to serve **residential** customers. First, the Company's experience with its other transportation programs has nothing to do with Staff's barrier to entry argument because residential customers can only be served under Customer Select. Second, Customer Select has grown each year because the Company expanded Customer Select eligibility each year, not because the Group Additions Charge does not pose a barrier to entry. Third, the number of suppliers serving residential customers has actually decreased from five to three. Staff continues to believe that the \$10 charge poses a barrier to entry for residential customers, and therefore, should be eliminated. The costs of customer switching should be recovered through a \$0.04 increase in the monthly Account Charge, as proposed by Staff.

## **V. CUB'S PROGRAM SAVINGS OFFSET PROPOSAL**

Mr. Mierzwa proposes that the Company's costs to provide storage inventory gas will decrease when customers move to an alternative supplier. In his direct testimony Mr. Mierzwa suggests that the Company will realize a savings in storage carrying costs of \$2.30 per month per customer. This cost savings is based on (1) 544 therms of storage needed per average residential customer; (2) \$0.40 per therm cost of gas; (3) 25% carrying charge rate; (4) Nicor Gas maintains storage inventory at 50% of maximum capacity.

In his rebuttal testimony, Mr. Mierzwa's calculation changes to \$1.74 per month per customer due to (1) changing the carrying charge to 16% and (2) changing to 60% the amount that the Company maintains in storage inventory as a percentage of maximum capacity. Mr. Mierzwa contends that this \$1.74 amount represents savings to Nicor, and more than offsets the fees that the Company is proposing to charge suppliers in the Customer Select Program.

Company witness Harms, in his rebuttal testimony, argues that the Company was allowed \$0.0027 per therm of throughput for storage inventory carrying costs in its 1996 rate case. At 1134 therms per year per average residential customer, this amounts to \$0.26 per month as possible savings for reduced storage inventory carrying charges. Mr. Harms further argues that because of other program changes related to storage inventory, such as year-round sign-up, monthly switching, changes in nominations and storage management, expanding the monthly imbalance tolerance and not transferring gas held in storage, it is impossible to accurately determine whether any savings will occur to the Company. Therefore, Mr. Harms argues that the amount of savings related to storage inventory carrying costs should be zero.

In addition, Mr. Harms also argues that Mr. Mierzwa's proposed adjustment represents "single issue" ratemaking and should not be allowed.

In response to the latter argument, Staff does not believe that this proposed adjustment represents "single issue" ratemaking. Within the context of this proceeding, which is only an analysis and evaluation of the Customer Select Program, it is proper to determine the increased costs of the Program and any possible decreased costs, which the Company may save through implementation of the Program. "Single issue" ratemaking

is a two part issue, and Mr. Harms has only addressed one of them, that being that Mr. Mierzwa has identified one possible cost saving without identifying other possible costs that may have increased, which is a valid argument. However, the second part of “single issue” ratemaking, which has not been proposed here, is that no one is suggesting that the Company’s base rates be reduced by the amount of possible savings from reduced storage inventory carrying charges. That would be the ‘ratemaking’ part of “single issue” ratemaking. The only suggestion in this case is that, within the Customer Select Program, it is appropriate to determine the savings that may occur, along with the costs that may occur, and develop fees and charges that reflect the best representation of the costs for this Program.

Mr. Harms and Mr. Mierzwa have each calculated an amount of possible savings related to storage inventory carrying costs. Mr. Harms calculates \$0.26 per month and Mr. Mierzwa calculates \$1.74 per month. Staff has reviewed the calculations of both Mr. Harms and Mr. Mierzwa and believes that Mr. Mierzwa’s measure of savings is appropriate. The \$0.26 per therm savings referenced by Mr. Harms is a measure of savings that is based on historical rather than current dollars. It is inappropriate to measure the additional costs associated with the Customer Select Program in current dollars, while measuring the additional savings in historical dollars. Mr. Mierzwa takes the appropriate approach of looking at the current, rather than historical, level of savings associated with offering the Program.

While Staff continues to support Mr. Sweatman’s justification of the various costs that Nicor has incurred as a result of this proceeding, Staff concurs with Mr. Mierzwa that the savings for reduced storage inventory carrying charges should be included as an offset

to Nicor's proposed Customer Select charges. Thus, if the Commission adopts Mr. Mierzwa's proposal to offset Nicor's costs with the savings from storage gas in inventory, then the Group Charge, Account Charge, Group Additions Charge, and the \$.50 per bill charge should be eliminated. However, if the Commission rejects Mr. Mierzwa's calculation of savings, then the Commission should adopt Mr. Sweatman's and Mr. Iannello's modifications to Nicor's proposed charges.

## **VI. SUMMARY OF STAFF'S PROPOSED MODIFICATIONS**

As explained in Staff's Initial Brief and above, it is Staff's position that the Commission Order in this proceeding should conclude that Nicor's proposed expansion of the Customer Select Program be approved. However, Staff maintains that its proposed modifications to Customer Select be approved by the Commission. (Staff IB, p. 5) Staff has discussed these modifications in its Direct and Rebuttal Testimony, at the Hearing and in its Initial Brief. A summary of Staff's proposed modifications to the Customer Select Program follows.

### **A. Rider 15**

#### **1. Charges for Defaulting Suppliers**

- a. Eliminate customer responsibility for charges owed to the Company by defaulting suppliers.

#### **2. Suppliers as the Bill Recipient**

- a. Remove the provision that customers shall not be allowed to designate their supplier as the bill recipient for bills rendered by the Company.

**3. Monies Received from Third-Parties**

- a. Provide for a method of sharing funds from a third-party that is consistent with the single billing policy that is adopted by the Commission.

**B. Rider 16**

**1. Fees and Charges**

- a. Approve GCI witness Mierzwa's recommendation to eliminate the following charges due to savings associated with the carrying costs of storage gas in inventory: Group Charge, Account Charge, Group Additions Charge, and the \$.50 per bill charge (GCI Ex. 2.0, p. 12)
- b. If the Commission does not approve GCI's offset, associated with savings in carrying costs for storage gas in inventory, then approve the modifications to Nicor's proposed charges as recommended below.

**2. Supplier Application Charge**

- a. Reduce the Supplier Application Charge to \$1,385.

**3. Group Charge**

- a. Add a separate Group Charge level of \$100, applicable to groups of less than 10,000 customers.
- b. Make the current \$200 Group Charge applicable to groups with 10,000 or more customers.

**4. Account Charge**

- a. Reduce the Account Charge to \$0.92 with \$0.88 representing adequately justified costs related to the Account Charge and \$0.04 representing recovery of costs associated with the Group Additions Charge.

**5. Group Additions Charge**

- a. Eliminate the Group Additions Charge and recover costs associated with switching through the monthly Account Charge.

**6. System Operational Controls**

- a. Eliminate the provision for OFOs.

**7. Standards of Conduct**

- a. Approve the Company's proposed new standards (e) and (m).
- b. Reject the Company's proposed new standard (l) regarding a customer's mailing address not being accessible to the supplier.
- c. Reject the Company's proposed new standard (l) regarding breach of contract.
- d. Approve the Company's revised standard (g).
- e. Approve the Company's added language, "Failure to comply with the Standards of Conduct is a basis for removal as a qualified Supplier under Customer Select."

- f. Approve Staff's additional language regarding filing complaints with the Commission.
- g. Approve the language recommended by GCI and Staff regarding affiliates who use a name and logo similar to the gas utility.

**C. Other Changes**

**1. Aggregator Balancing Service Charge ("ABSC")**

- a. Eliminate references to OFOs in the definition of the ABSC in Rider 6.

**2. Customer Education Workshops**

- a. Order the Company to conduct workshops on customer education for the Customer Select Program.

**3. Customer Enrollment**

- a. Order the Company to develop minimum procedures, to be incorporated into its tariffs, that suppliers would have to follow when signing up customers.

**4. The Use of Letter of Agency Documents ("LOA")**

- a. Order the Company to require any supplier that signs up customers through written contracts to obtain information through a document similar to the LOA.
- b. Order the Company to develop procedures similar to those recommended by GCI with respect to Internet enrollment.



**5. Disclosure of Contract Terms**

- a. Order the Company in the Standards of Conduct section in Rider 16 to require suppliers to disclose their contract terms to their customers by adding disclosure provisions similar to those used by electric suppliers.

**6. Payment of Regulated and Non-regulated Charges Under a Nicor Single Billing Program**

- a. Order the Company to distinguish between regulated and unregulated charges in its collection programs and to delineate how partial payments should be allocated between suppliers and Nicor, if the Company offers single billing.

**7. Customer Credit and Bill Payment**

- a. Order Nicor to cease providing a customer's credit or payment history to a supplier.

**8. Right of Rescission**

- a. Reject the GCI recommendation to allow customers a short amount of time to rescind their decision to switch suppliers, without penalty.

**9. Notification Letters**

- a. Require Nicor to send letters to customers notifying them of their participation in the Customer Select Program.

**10. Uniform Price Disclosure**

- a. Reject the GCI recommendation to require suppliers to disclose prices in a uniform manner because it may be misleading.

**VII. CONCLUSION**

For the reasons set forth in the above discussion and in Staff's Initial Brief, Staff respectfully requests that the Commission approve, with Staff's proposed modifications, Nicor's proposed changes to Riders 15, 16, and related provisions.

Respectfully submitted,

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CITIZENS UTILITY BOARD	:	
	:	00-0620
Request for an investigation into the	:	
current structure of the Nicor Customers	:	
Select Pilot Program and the Proposed	:	
Changes filed August 10, 2000, Meet the	:	
Public Interest Standards and Other	:	
Requirements Set Forth in the Public	:	(Consolidated)
Utilities Act. 220 ILCS 5/4-101, 220 ILCS	:	
5/8-101; 220 ILCS 8-102	:	
 NORTHERN ILLINOIS GAS COMPANY	:	
d/b/a Nicor Gas Company	:	
	:	00-0621
Proposed changes to Riders 15 and 16	:	
and related provisions. (Tariffs filed on	:	
August 11, 2000)	:	

NOTICE OF FILING

TO: Attached Service List

PLEASE TAKE NOTICE that on this 12th day of April, 2001, I have filed with the Chief Clerk of the Illinois Commerce Commission, the redacted and unredacted versions of the Reply Brief of the Staff of the Illinois Commerce Commission, copies of which are hereby served upon you.

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LINDA M. BUELL  
Staff Attorney

Counsel for the Staff of the Illinois Commerce  
Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Filing, together with the redacted and unredacted versions of the Reply Brief of the Staff of the Illinois Commerce Commission, were served upon the parties on the attached service list by electronic mail on the 12th day of April, 2001, and by first class mail, proper postage prepaid, on the 13th day of April, 2001.

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